

*efiled 3/29/07

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

William Michael DENNIS,

Petitioner,

v.

Robert L. AYERS Jr., Warden of San Quentin
State Prison,

Respondent.

Case Number C 98 21027 JF

DEATH-PENALTY CASE

ORDER DENYING AS MOOT
MOTION TO ALLOW COUNSEL TO
WITHDRAW

[Docket No. 219]

Petitioner initiated the instant action in 1998 with a motion for appointment of counsel and stay of execution. In 1999, the Court appointed Peter Giannini as counsel for Petitioner. In 2006, after a request by Mr. Giannini to appoint James S. Thomson and Saor E. Stetler as co-counsel, the Court on July 17, 2006, appointed Mr. Stetler, individually, as co-counsel. In response, counsel requested that the Court reconsider the appointment of solely Mr. Stetler. On November 6, 2006, the Court vacated the July 17, 2006, order and appointed only Mr. Thomson as co-counsel, in light of the policies of the Judicial Council of the Ninth Circuit, which generally permit the appointment of only two counsel for a capital habeas petitioner. In denying the request to reconsider the appointment of both Messrs. Thomson and Stetler as co-counsel, the Court noted that Mr. Stetler "may serve in the role of associate counsel for James Thomson and Peter Giannini."

1 Presently before the Court is a motion to allow Mr. Stetler to withdraw as co-counsel for
2 Petitioner due to the dissolution of the law partnership of Messrs. Thomson and Stetler. The
3 request is moot as the Court indicated that Mr. Stetler "may" assist Messrs. Giannini and
4 Thomson as an associate in representing Petitioner, but was not appointed by the Court and
5 correspondingly has no obligation to do so. Only an attorney whom the Court has appointed to
6 represent a party can withdraw as counsel for that party. Not being appointed as co-counsel for
7 Petitioner, Mr. Stetler ipso facto cannot withdraw as co-counsel for Petitioner.

8 Accordingly, and good cause therefor appearing, the motion to allow Mr. Stetler to
9 withdraw as counsel for Petitioner is denied as moot.

10 *It is so ordered.*

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12 DATED: 3/29/07
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JEREMY FOGEL
United States District Judge

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1 Copies of Order mailed on 3/29/07 to:

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